

106TH CONGRESS
1ST SESSION

S. 1931

To provide a more just and uniform procedure for Federal civil forfeitures,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 1999

Mr. HATCH (for himself and Mr. LEAHY) introduced the following bill; which
was read twice and referred to the Committee on the Judiciary

A BILL

To provide a more just and uniform procedure for Federal
civil forfeitures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Asset Forfeiture
5 Reform Act”.

6 **SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL**
7 **FORFEITURE PROCEEDINGS.**

8 (a) IN GENERAL.—Chapter 46 of title 18, United
9 States Code, is amended by inserting after section 981 the
10 following:

1 **“§ 981A. General rules for civil forfeiture proceedings**

2 “(a) NOTICE; CLAIM; COMPLAINT.—(1)(A)(i) Except
3 as provided in clauses (ii) and (iii), in any nonjudicial civil
4 forfeiture proceeding under a civil forfeiture statute, with
5 respect to which the Government must send written notice
6 to interested parties, such notice shall be sent in a manner
7 to achieve proper service as soon as practicable, and in
8 no case more than 60 days after the date of the seizure.

9 “(ii) In a case in which the property is seized by a
10 State or local law enforcement agency and turned over to
11 a Federal law enforcement agency for the purpose of for-
12 feiture under Federal law, notice shall be sent no more
13 than 90 days after the date of seizure by the State or
14 local law enforcement agency.

15 “(iii) If the identity or interest of a party is not deter-
16 mined until after the seizure or turnover but is determined
17 before a declaration of forfeiture is entered, notice shall
18 be sent to such interested party not later than 60 days
19 after the determination by the Government of the identity
20 of the party or the party’s interest.

21 “(B) A court shall extend the period for sending no-
22 tice under subparagraph (A) for a period not to exceed
23 60 days (which period may be further extended), if the
24 court determines, based on a written ex parte certification
25 of a supervisory official of the seizing agency, that there

1 is reason to believe that notice may have an adverse result,
2 including—

3 “(i) endangering the life or physical safety of
4 an individual;

5 “(ii) flight from prosecution;

6 “(iii) destruction of or tampering with evidence;

7 “(iv) intimidation of potential witnesses; or

8 “(v) otherwise seriously jeopardizing an inves-
9 tigation or unduly delaying a trial.

10 “(C) If the Government does not send notice of a sei-
11 zure of property in accordance with subparagraph (A) to
12 the person from whom the property was seized, and no
13 extension of time is granted, the Government shall return
14 the property to that person without prejudice to the right
15 of the Government to commence a forfeiture proceeding
16 at a later time.

17 “(2)(A) Any person claiming property seized in a
18 nonjudicial forfeiture proceeding may file a claim with the
19 appropriate official after the seizure.

20 “(B) A claim under subparagraph (A) may be filed
21 not later than the deadline set forth in a personal notice
22 letter, except that if that letter is not received, then a
23 claim may be filed not later than 30 days after the date
24 of final publication of notice of seizure.

1 “(C) The claim shall state the claimant’s interest in
2 the property and be made under oath, subject to penalty
3 of perjury. The seizing agency shall make claim forms gen-
4 erally available on request.

5 “(D) Any person may make a claim under subpara-
6 graph (A) without posting bond with respect to the prop-
7 erty which is the subject of the claim.

8 “(3)(A) Not later than 90 days after a claim has been
9 filed, the Government shall file a complaint for forfeiture
10 in the manner set forth in the Supplemental Rules for Cer-
11 tain Admiralty and Maritime Claims or return the prop-
12 erty pending the filing of a complaint, except that a court
13 in the district in which the complaint will be filed may
14 extend the period for filing a complaint for good cause
15 shown or upon agreement of the parties.

16 “(B) If the Government does not file a complaint for
17 forfeiture or return the property, in accordance with sub-
18 paragraph (A), it shall return the property and may not
19 take any further action to effect the civil forfeiture of such
20 property.

21 “(C) In lieu of, or in addition to, filing a civil for-
22 feiture complaint, the Government may include a for-
23 feiture allegation in a criminal indictment. In such case,
24 the Government’s right to continued possession of the

1 property shall be governed by the applicable criminal for-
2 feiture statute.

3 “(D) No complaint may be dismissed on the ground
4 that the Government did not have adequate evidence at
5 the time the complaint was filed to establish the forfeit-
6 ability of the property by a preponderance of the evidence.

7 “(4)(A) In any case in which the Government files
8 in the appropriate United States district court a complaint
9 for forfeiture of property, any person claiming an interest
10 in the seized property may file a claim asserting such per-
11 son’s interest in the property in the manner set forth in
12 the Supplemental Rules for Certain Admiralty and Mari-
13 time Claims, except that such claim may be filed not later
14 than 30 days after the date of service of the Government’s
15 complaint or, as applicable, not later than 30 days after
16 the date of final publication of notice of the filing of the
17 complaint.

18 “(B) A person asserting an interest in seized prop-
19 erty, in accordance with subparagraph (A), shall file an
20 answer to the Government’s complaint for forfeiture not
21 later than 20 days after the date of the filing of the claim.

22 “(b) APPOINTMENT OF COUNSEL.—(1) If—

23 “(A) a person in a judicial civil forfeiture pro-
24 ceeding under a civil forfeiture statute is financially
25 unable to obtain representation by counsel; and

1 “(B)(i) the property subject to forfeiture is real
2 property that is being used by the person as a pri-
3 mary residence; or

4 “(ii) the person is represented by counsel ap-
5 pointed under section 3006A of this title in connec-
6 tion with a related criminal case;

7 the court may appoint or authorize counsel to represent
8 that person with respect to the claim, as appropriate.

9 “(2) In determining whether to appoint or authorize
10 counsel to represent a person asserting a claim under this
11 subsection, the court shall take into account such factors
12 as—

13 “(A) the person’s standing to contest the for-
14 feiture; and

15 “(B) whether the claim appears to be made in
16 good faith.

17 “(3) The court shall set the compensation for rep-
18 resentation under this subsection, which shall be equiva-
19 lent to that provided for court-appointed representation
20 under section 3006A of this title.

21 “(c) BURDEN OF PROOF.—In all suits or actions
22 brought under any civil forfeiture statute for the civil for-
23 feiture of any property, the burden of proof is on the Gov-
24 ernment to establish, by a preponderance of the evidence,
25 that the property is subject to forfeiture. The Government

1 may use evidence gathered after the filing of a complaint
 2 for forfeiture to establish, by a preponderance of the evi-
 3 dence, that property is subject to forfeiture.

4 “(d) INNOCENT OWNER DEFENSE.—(1) An innocent
 5 owner’s interest in property shall not be forfeited under
 6 any civil forfeiture statute. The claimant shall have the
 7 burden of proving that he is an innocent owner by a pre-
 8 ponderance of the evidence.

9 “(2)(A) With respect to a property interest in exist-
 10 ence at the time the illegal conduct giving rise to forfeiture
 11 took place, the term ‘innocent owner’ means an owner
 12 who—

13 “(i) did not know of the conduct giving rise to
 14 forfeiture; or

15 “(ii) upon learning of the conduct giving rise to
 16 the forfeiture, did all that reasonably could be ex-
 17 pected under the circumstances to terminate such
 18 use of the property.

19 “(B)(i) For the purposes of this paragraph, ways in
 20 which a person may show that such person did all that
 21 reasonably could be expected may include demonstrating
 22 that such person, to the extent permitted by law—

23 “(I) gave timely notice to an appropriate law
 24 enforcement agency of information that led the per-

1 son to know the conduct giving rise to a forfeiture
2 would occur or has occurred; and

3 “(II) in a timely fashion revoked or attempted
4 to revoke permission for those engaging in such con-
5 duct to use the property or took reasonable actions
6 in consultation with a law enforcement agency to
7 discourage or prevent the illegal use of the property.

8 “(ii) A person is not required by this subparagraph
9 to take steps that the person reasonably believes would
10 be likely to subject any person (other than the person
11 whose conduct gave rise to the forfeiture) to physical dan-
12 ger.

13 “(3)(A) With respect to a property interest acquired
14 after the conduct giving rise to the forfeiture has taken
15 place, the term ‘innocent owner’ means a person who, at
16 the time that person acquired the interest in the
17 property—

18 “(i) was a bona fide purchaser or seller for
19 value (including a purchaser or seller of goods or
20 services for value); and

21 “(ii) did not know and was reasonably without
22 cause to believe that the property was subject to for-
23 feiture.

1 “(B) An otherwise valid claim under subparagraph
2 (A) shall not be denied on the ground that the claimant
3 gave nothing of value in exchange for the property if—

4 “(i) the property is the primary residence of the
5 claimant;

6 “(ii) depriving the claimant of the property
7 would deprive the claimant of the claimant’s only
8 means of maintaining adequate shelter in the com-
9 munity for the claimant and all dependents residing
10 with the claimant;

11 “(iii) the property is not, and is not traceable
12 to, the proceeds of any criminal offense; and

13 “(iv) the claimant acquired his or her interest
14 in the property through marriage, divorce, or legal
15 separation, or the claimant was the spouse or legal
16 dependent of a person whose death resulted in the
17 transfer of the property to the claimant through in-
18 heritance or probate;

19 except that the court shall limit the value of any real prop-
20 erty interest for which innocent ownership is recognized
21 under this subparagraph to the value necessary to main-
22 tain adequate shelter in the community for such claimant
23 and all dependents residing with the claimant.

24 “(4) Notwithstanding any provision of this sub-
25 section, no person may assert an ownership interest under

1 this subsection in contraband or other property that it is
2 illegal to possess.

3 “(e) MOTION TO SET ASIDE FORFEITURE.—(1) Any
4 person entitled to written notice in any nonjudicial civil
5 forfeiture proceeding under a civil forfeiture statute who
6 does not receive such notice may file a motion to set aside
7 a declaration of forfeiture with respect to that person’s
8 interest in the property, which motion shall be granted
9 if—

10 “(A) the Government knew, or reasonably
11 should have known, of the moving party’s interest
12 and failed to take reasonable steps to provide such
13 party with notice; and

14 “(B) the moving party did not know or have
15 reason to know of the seizure within sufficient time
16 to file a timely claim.

17 “(2) If the court grants a motion under paragraph
18 (1), the court shall set aside the declaration of forfeiture
19 as to the interest of the moving party without prejudice
20 to the right of the Government to commence a subsequent
21 forfeiture proceeding as to the interest of the moving
22 party, which proceeding shall be instituted within 60 days
23 of the entry of the order granting the motion.

24 “(3) A motion under paragraph (1) may be filed not
25 later than 6 years after the date that the claimant discov-

1 ered or had reason to discover that the property was for-
2 feited, subject to the doctrine of laches, except that no
3 motion may be filed more than 11 years after the date
4 that the Government's forfeiture cause of action accrued.

5 “(f) RELEASE OF SEIZED PROPERTY.—(1) A claim-
6 ant under subsection (a) is entitled to immediate release
7 of seized property if—

8 “(A) the claimant has a possessory interest in
9 the property;

10 “(B) the claimant has sufficient ties to the
11 community to provide assurance that the property
12 will be available at the time of the trial;

13 “(C) the continued possession by the Govern-
14 ment pending the final disposition of forfeiture pro-
15 ceedings will cause substantial hardship to the
16 claimant, such as preventing the functioning of a
17 business, preventing an individual from working, or
18 leaving an individual homeless;

19 “(D) the claimant's likely hardship from the
20 continued possession by the Government of the
21 seized property outweighs the risk that the property
22 will be destroyed, damaged, lost, concealed, or trans-
23 ferred if it is returned to the claimant during the
24 pendency of the proceeding; and

1 “(E) none of the conditions set forth in para-
2 graph (7) applies.

3 “(2) A claimant seeking release of property under
4 this subsection must request possession of the property
5 from the appropriate official, and the request must set
6 forth the basis on which the requirements of paragraph
7 (1) are met.

8 “(3) If not later than 10 days after the date of a
9 request under paragraph (2) the property has not been
10 released, the claimant may file a motion or complaint in
11 the district court in which the complaint has been filed
12 or, if no complaint has been filed, any district court that
13 would have jurisdiction of forfeiture proceedings relating
14 to the property, setting forth—

15 “(A) the basis on which the requirements of
16 paragraph (1) are met; and

17 “(B) the steps the claimant has taken to secure
18 release of the property from the appropriate official.

19 “(4) The court shall render a decision on a motion
20 or complaint filed under paragraph (3) no later than 30
21 days after the date of the filing, unless such 30-day limita-
22 tion is extended by consent of the parties or by the court
23 for good cause shown.

24 “(5) If—

1 “(A) a motion or complaint is filed under para-
2 graph (3); and

3 “(B) the claimant demonstrates that the re-
4 quirements of paragraph (1) have been met;
5 the district court shall order that the property be returned
6 to the claimant, pending completion of proceedings by the
7 Government to obtain forfeiture of the property.

8 “(6) If the court grants a motion or complaint under
9 paragraph (3)—

10 “(A) the court may enter any order necessary
11 to ensure that the value of the property is main-
12 tained while the forfeiture action is pending,
13 including—

14 “(i) permitting the inspection,
15 photographing, and inventory of the property;

16 “(ii) fixing a bond in accordance with rule
17 E(5) of the Supplemental Rules for Certain Ad-
18 miralty and Maritime Claims; and

19 “(iii) requiring the claimant to obtain or
20 maintain insurance on the subject property; and

21 “(B) the Government may place a lien against
22 the property or file a lis pendens to ensure that the
23 property is not transferred to another person.

24 “(7) This subsection shall not apply if the seized
25 property—

1 “(A) is contraband, currency or other monetary
2 instrument, or electronic funds unless such currency
3 or other monetary instrument or electronic funds
4 constitutes the assets of a legitimate business which
5 has been seized;

6 “(B) is to be used as evidence of a violation of
7 the law;

8 “(C) by reason of design or other characteristic,
9 is particularly suited for use in illegal activities; or

10 “(D) is likely to be used to commit additional
11 criminal acts if returned to the claimant.

12 “(g) PROPORTIONALITY.—The claimant may petition
13 the court to determine whether the forfeiture was constitu-
14 tionally excessive. In making this determination, the court
15 shall compare the forfeiture to the gravity of the offense
16 giving rise to the forfeiture. If the court finds that the
17 forfeiture is grossly disproportional to the offense it shall
18 reduce or eliminate the forfeiture as necessary. The claim-
19 ant shall have the burden of establishing that the for-
20 feiture is grossly disproportional by a preponderance of
21 the evidence at a hearing conducted by the court without
22 a jury.

23 “(h) DEFINITIONS.—In this section:

24 “(1)(A) Except as provided in subparagraph
25 (B), the term ‘civil forfeiture statute’ means any

1 provision of Federal law providing for the forfeiture
2 of property other than as a sentence imposed upon
3 conviction of a criminal offense.

4 “(B) The term ‘civil forfeiture statute’ does not
5 include—

6 “(i) the Tariff Act of 1930 or any other
7 provision of law codified in title 19;

8 “(ii) the Internal Revenue Code of 1986;

9 “(iii) the Federal Food, Drug, and Cos-
10 metic Act (21 U.S.C. 301 et seq.);

11 “(iv) the Trading with the Enemy Act (50
12 U.S.C. App. 1 et seq.); or

13 “(v) section 1 of title VI of the Act of
14 June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

15 “(2)(A) The term ‘owner’ means a person with
16 an ownership interest in the specific property sought
17 to be forfeited, including a leasehold, lien, mortgage,
18 recorded security interest, or valid assignment of an
19 ownership interest.

20 “(B) The term ‘owner’ does not include—

21 “(i) a person with only a general unse-
22 cured interest in, or claim against, the property
23 or estate of another;

1 “(ii) a bailee unless the bailor is identified
2 and the bailee shows a colorable legitimate in-
3 terest in the property seized; or

4 “(iii) a nominee who exercises no dominion
5 or control over the property.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENT.—
7 The analysis for chapter 46 of title 18, United States
8 Code, is amended by inserting after the item relating to
9 section 981 the following:

“981A. General rules for civil forfeiture proceedings.”.

10 **SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROP-**
11 **ERTY.**

12 (a) TORT CLAIMS ACT.—Section 2680(c) of title 28,
13 United States Code, is amended—

14 (1) by striking “any goods or merchandise” and
15 inserting “any goods, merchandise, or other prop-
16 erty”;

17 (2) by striking “law-enforcement” and inserting
18 “law enforcement”; and

19 (3) by inserting before the period at the end the
20 following: “, except that the provisions of this chap-
21 ter and section 1346(b) of this title apply to any
22 claim based on injury or loss of goods, merchandise,
23 or other property, while in the possession of any offi-
24 cer of customs or excise or any other law enforce-
25 ment officer, if—

1 “(1) the property was seized for the purpose of
2 forfeiture under any provision of Federal law pro-
3 viding for the forfeiture of property other than as a
4 sentence imposed upon conviction of a criminal of-
5 fense;

6 “(2) the interest of the claimant is not for-
7 feited; and

8 “(3) the claimant is not convicted of a crime for
9 which the interest of the claimant in the property
10 would be subject to forfeiture under a Federal crimi-
11 nal forfeiture law.”.

12 (b) DEPARTMENT OF JUSTICE.—

13 (1) IN GENERAL.—With respect to a claim that
14 cannot be settled under chapter 171 of title 28,
15 United States Code, the Attorney General may set-
16 tle, for not more than \$50,000 in any case, a claim
17 for damage to, or loss of, privately owned property
18 caused by an investigative or law enforcement officer
19 (as defined in section 2680(h) of title 28, United
20 States Code) who is employed by the Department of
21 Justice acting within the scope of his or her employ-
22 ment.

23 (2) LIMITATIONS.—The Attorney General may
24 not pay a claim under paragraph (1) that—

1 (A) is presented to the Attorney General
 2 more than 1 year after it occurs; or

3 (B) is presented by an officer or employee
 4 of the Federal Government and arose within the
 5 scope of employment.

6 **SEC. 4. ATTORNEY FEES, COSTS, AND INTEREST.**

7 (a) IN GENERAL.—Section 2465 of title 28, United
 8 States Code, is amended to read as follows:

9 **“§ 2465. Return of property to claimant; liability for**
 10 **wrongful seizure; attorney fees, costs,**
 11 **and interest**

12 “(a) Upon the entry of a judgment for the claimant
 13 in any proceeding to condemn or forfeit property seized
 14 or arrested under any provision of Federal law—

15 “(1) such property shall be returned forthwith
 16 to the claimant or his agent; and

17 “(2) if it appears that there was reasonable
 18 cause for the seizure or arrest, the court shall cause
 19 a proper certificate thereof to be entered and, in
 20 such case, neither the person who made the seizure
 21 or arrest nor the prosecutor shall be liable to suit or
 22 judgment on account of such suit or prosecution, nor
 23 shall the claimant be entitled to costs, except as pro-
 24 vided in subsection (b).

1 “(b)(1) Except as provided in paragraph (2), in any
2 civil proceeding to forfeit property under any provision of
3 Federal law in which the claimant substantially prevails,
4 the United States shall be liable for—

5 “(A) reasonable attorney fees and other litiga-
6 tion costs reasonably incurred by the claimant;

7 “(B) post-judgment interest, as set forth in sec-
8 tion 1961 of this title; and

9 “(C) in cases involving currency, other nego-
10 tiable instruments, or the proceeds of an interlocu-
11 tory sale—

12 “(i) interest actually paid to the United
13 States from the date of seizure or arrest of the
14 property that resulted from the investment of
15 the property in an interest-bearing account or
16 instrument; and

17 “(ii) an imputed amount of interest that
18 such currency, instruments, or proceeds would
19 have earned at the rate described in section
20 1961, for any period during which no interest
21 was paid (not including any period when the
22 property reasonably was in use as evidence in
23 an official proceeding or in conducting scientific
24 tests for the purpose of collecting evidence).

1 “(2)(A) The United States shall not be required to
 2 disgorge the value of any intangible benefits nor make any
 3 other payments to the claimant not specifically authorized
 4 by this subsection.

5 “(B) The provisions of paragraph (1) shall not apply
 6 if the claimant is convicted of a crime for which the inter-
 7 est of the claimant in the property would be subject to
 8 forfeiture under a Federal criminal forfeiture law.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 10 The analysis for chapter 163 of title 28, United States
 11 Code, is amended by striking the item relating to section
 12 2465 and inserting following:

“2465. Return of property to claimant; liability for wrongful seizure; attorney
 fees, costs, and interest.”.

13 **SEC. 5. SEIZURE WARRANT REQUIREMENT.**

14 (a) IN GENERAL.—Section 981(b) of title 18, United
 15 States Code, is amended to read as follows:

16 “(b)(1) Except as provided in section 985, any prop-
 17 erty subject to forfeiture to the United States under sub-
 18 section (a) may be seized by the Attorney General and,
 19 in the case of property involved in a violation investigated
 20 by the Secretary of the Treasury or the United States
 21 Postal Service, the property may also be seized by the Sec-
 22 retary of the Treasury or the Postal Service, respectively.

23 “(2) Seizures pursuant to this section shall be made
 24 pursuant to a warrant obtained in the same manner as

1 provided for a search warrant under the Federal Rules
2 of Criminal Procedure, except that a seizure may be made
3 without a warrant if—

4 “(A) a complaint for forfeiture based on prob-
5 able cause has been filed in the United States dis-
6 trict court and the court has issued an arrest war-
7 rant in rem pursuant to the Supplemental Rules for
8 Certain Admiralty and Maritime Claims;

9 “(B) there is probable cause to believe that the
10 property is subject to forfeiture and—

11 “(i) the seizure is made pursuant to a law-
12 ful arrest or search; or

13 “(ii) another exception to the Fourth
14 Amendment warrant requirement would apply;
15 or

16 “(C) the property was lawfully seized by a State
17 or local law enforcement agency and has been trans-
18 ferred to a Federal agency in accordance with State
19 law.

20 “(3) Notwithstanding the provisions of rule 41(a) of
21 the Federal Rules of Criminal Procedure, a seizure war-
22 rant may be issued pursuant to this subsection by a judi-
23 cial officer in any district in which a forfeiture action
24 against the property may be filed under section 1355(b)

1 of title 28, and executed in any district in which the prop-
 2 erty is found.”.

3 (b) DRUG FORFEITURES.—Section 511(b) of the
 4 Controlled Substances Act (21 U.S.C. 881(b)) is amended
 5 to read as follows:

6 “(b) SEIZURE PROCEDURES.—Any property subject
 7 to forfeiture to the United States under this section may
 8 be seized by the Attorney General in the manner set forth
 9 in section 981(b) of title 18, United States Code.”.

10 **SEC. 6. USE OF FORFEITED FUNDS TO PAY RESTITUTION**
 11 **TO CRIME VICTIMS.**

12 Section 981(e) of title 18, United States Code, is
 13 amended by striking paragraph (6) and inserting the fol-
 14 lowing:

15 “(6) as restoration to any victim of the offense
 16 giving rise to the forfeiture, including, in the case of
 17 a money laundering offense, any offense constituting
 18 the underlying specified unlawful activity; or”.

19 **SEC. 7. CIVIL FORFEITURE OF REAL PROPERTY.**

20 (a) IN GENERAL.—Chapter 46 of title 18, United
 21 States Code, is amended by inserting after section 984 the
 22 following:

1 **“§ 985. Civil forfeiture of real property**

2 “(a) Notwithstanding any other provision of law, all
3 civil forfeitures of real property and interests in real prop-
4 erty shall proceed as judicial forfeitures.

5 “(b)(1) Except as provided in this section—

6 “(A) real property that is the subject of a civil
7 forfeiture action shall not be seized before entry of
8 an order of forfeiture; and

9 “(B) the owners or occupants of the real prop-
10 erty shall not be evicted from, or otherwise deprived
11 of the use and enjoyment of, real property that is
12 the subject of a pending forfeiture action.

13 “(2) The filing of a lis pendens and the execution
14 of a writ of entry for the purpose of conducting an inspec-
15 tion and inventory of the property shall not be considered
16 a seizure under this subsection.

17 “(c)(1) The Government shall initiate a civil for-
18 feiture action against real property by—

19 “(A) filing a complaint for forfeiture;

20 “(B) posting a notice of the complaint on the
21 property; and

22 “(C) serving notice on the property owner,
23 along with a copy of the complaint.

24 “(2) If the property owner cannot be served with the
25 notice under paragraph (1) because the owner—

26 “(A) is a fugitive;

1 “(B) resides outside the United States and ef-
2 forts at service pursuant to Rule 4 of the Federal
3 Rules of Civil Procedure are unavailing; or

4 “(C) cannot be located despite the exercise of
5 due diligence,

6 constructive service may be made in accordance with the
7 laws of the State in which the property is located.

8 “(3) If real property has been posted in accordance
9 with this subsection, it shall not be necessary for the court
10 to issue an arrest warrant in rem, or to take any other
11 action to establish in rem jurisdiction over the property.

12 “(d) Real property may be seized prior to the entry
13 of an order of forfeiture if—

14 “(1) the Government notifies the court that it
15 intends to seize the property before trial; and

16 “(2) the court—

17 “(A) issues a notice of application for war-
18 rant, causes the notice to be served on the
19 property owner and posted on the property, and
20 conducts a hearing to determine if there is
21 probable cause for the forfeiture; or

22 “(B) makes an ex parte determination that
23 there is probable cause for the forfeiture and
24 that there are exigent circumstances that per-
25 mit the government to seize the property with-

1 out prior notice and an opportunity for the
 2 property owner to be heard.

3 For purposes of paragraph (2)(B), to establish exigent cir-
 4 cumstances, the Government shall show that less restric-
 5 tive measures such as a *lis pendens*, restraining order, or
 6 bond would not suffice to protect the Government's inter-
 7 ests in preventing the sale, destruction, or continued un-
 8 lawful use of the real property.

9 “(e) If the court authorizes a seizure of real property
 10 under subsection (d)(2), it shall conduct a prompt post-
 11 seizure hearing during which the property owner shall
 12 have an opportunity to contest the basis for the seizure.

13 “(f) This section—

14 “(1) applies only to civil forfeitures of real
 15 property and interests in real property;

16 “(2) does not apply to forfeitures of the pro-
 17 ceeds of the sale of such property or interests, or of
 18 money or other assets intended to be used to acquire
 19 such property or interests; and

20 “(3) shall not affect the authority of the court
 21 to enter a restraining order relating to real prop-
 22 erty.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 24 The analysis for chapter 46 of title 18, United States

1 Code, is amended by inserting after the item relating to
2 section 984 the following:

“985. Civil forfeiture of real property.”.

3 **SEC. 8. APPLICABILITY.**

4 This Act and the amendments made by this Act shall
5 apply to any forfeiture proceeding commenced on or after
6 the date of enactment of this Act.

